

Accompanying Documents

Accompanying this response is a Declaration Pursuant to 37 CFR §1.131, signed by each of the inventors.

Remarks

Introductory Comments:

Claims 1, 3-5, 7-12, 17, 18, 47, 49-51, 53-58, 63 and 64 were examined in the Office Action dated December 4, 1998 and rejected under 35 USC §103, as unpatentable over U.S. Patent No. 5,650,496, to Brierley et al. ("Brierley") in view of U.S. Patent No. 5,712,249, to Halloran et al. ("Halloran") (claims 1, 5-12, 17, 47, 51, 53-57 and 63); Halloran in view of Brierley (claims 1, 5, 7-12, 17, 47, 51, 53-57 and 63); and Brierley in view of Halloran and further in view of International Publication No. WO 96/07744 to Bussineau et al. ("Bussineau") or Halloran in view of Brierley and further in view of Bussineau (claims 1, 3-5, 7-12, 17, 18, 47, 49-51, 53-58, 63 and 64). These rejections are respectfully traversed for the reasons discussed below.

Applicants note with appreciation the withdrawal of the previous rejections under 35 USC §112, first paragraph, 35 USC §102(e) over Brierley, and 35 USC §103 over Brierley in view of Holtz and Bussineau.

Formal Matters:

The Office objected to claims 47, 49-51, 53-58 and 63, as being substantial duplicates of claims 1, 2-5, 7-12 and 17. Applicants note that this objection is not proper at this time since no claims have yet been allowed. See, MPEP §706.03(k): "[W]hen two claims in an application are duplicates, or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other claim under 37 CFR 1.75 as being a substantial duplicate of the allowed claim." (Emphasis added.) Furthermore, applicants submit that the scope of

the claims in the two groups differ. Nevertheless, applicants will consider canceling one of the groups of claims should such appear warranted upon allowance.

Rejections Over the Art:

The claims were rejected under 35 USC §103, as unpatentable over Brierley in view of Halloran (claims 1, 5-12, 17, 47, 51, 53-57 and 63); Halloran in view of Brierley (claims 1, 5, 7-12, 17, 47, 51, 53-57 and 63); and Brierley in view of Halloran and further in view of Bussineau, or Halloran in view of Brierley and further in view of Bussineau (claims 1, 3-5, 7-12, 17, 18, 47, 49-51, 53-58, 63 and 64). Applicants note that the Office relies on Halloran in making each of these rejections. Applicants are submitting herewith a Declaration Pursuant to 37 CFR 1.131, showing that they conceived of the claimed invention prior to September 8, 1994, Halloran's earliest filing date, and diligently reduced it to practice . This date is less than one year prior to applicants' filing date of June 7, 1995. Accordingly, Halloran is not properly citable art and each one of the above bases for rejection has now been overcome. Withdrawal thereof is respectfully requested.

Conclusion

Applicants respectfully submit that the pending claims define an invention which is novel and nonobvious over the art. Accordingly, allowance is believed to be in order and an early notification to that effect would be appreciated.

Atty Dkt No. 1087.001  
USSN: 08/477,984  
PATENT

Please direct all further communications in this application to:

Joseph H. Guth  
Chiron Corporation  
Intellectual Property - R440  
P.O. Box 8097  
Emeryville, CA 94662-8097  
Telephone: (510) 923-3888  
Facsimile: (510) 655-3542.

Respectfully submitted,

Date: 6/4/99

By: Roberta L. Robins

Roberta L. Robins  
Registration No. 33,208  
Attorney for Applicants

CHIRON CORPORATION  
Intellectual Property - R440  
P.O. Box 8097  
Emeryville, CA 94662-8097  
Telephone: (510) 923-3888  
Facsimile: (510) 655-3542